IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6554 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARESH VRIJLAL KANTIA

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

MR MR ANAND for Petitioner (absent)

Ms Kerawala for MR BP TANNA for Respondent No. 1

MR M A BUKHARI, AGP for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 14/03/2000

ORAL JUDGEMENT

Nobody was present for the petitioner.

This petition is filed by the petitioner for an

appropriate writ, order or direction directing the respondent authorities to treat the advertisement at Annexure `F' as illegal, unconstitutional, without jurisdiction and null and void and further directing the authorities to fill in the post of Deputy Chief Auditor for promotion of departmental candidate in accordance with seniority and reservation policy, considering the roster point for promotion of scheduled caste candidate and with consequential benefits.

The case of the petitioner was that he was working as Assistant Auditor. Though he was entitled to be considered for promotional post of Deputy Chief Auditor, his case was not considered. Only with a view to deprive him of the promotional post, the authorities issued the advertisement at Annexure `F' by which applications were invited for direct recruitment to the post of Deputy Chief Auditor in the pay scale of Rs. 3000-4500 thereby depriving the petitioner of his legitimate claim of getting promotion.

Affidavit in reply is filed on behalf of the respondent corporation. It was inter alia contended that an advertisement was issued for direct selection to the post of Deputy Chief Auditor. The petitioner cannot contend that the post must be filled in by promotion. Regarding qualifications, it was stated that a candidate must be a Chartered Accountant or an Incorporated Accountant or a Registered Accountant or a Graduate in Commerce with Advance Accounting and Auditing of a recognised University. It was stated in para 7 of the affidavit that the petitioner was possessing qualification of B.Com., but in response to the advertisement issued by the respondent corporation, several candidates with Chartered Accountancy and equivalent qualifications had applied and the petitioner realised that he will not be able to compete them satisfactorily and he,therefore, had filed the present petition.

Regarding promotion, in para 6 of the affidavit, it was stated that the petitioner was holding the post of Assistant Auditor in the pay scale of Rs. 1640-2000. Next promotional post was Senior Assistant Auditor in the pay scale of Rs. 2000-3200 and from the post of Senior Assistant Auditor, a person can be promoted to the post of Deputy Chief Auditor. In other words, feeder cadre for filling in the post of Deputy Chief Auditor by promotion is Senior Assistant Auditor (Rs. 2000-3200) and not Assistant Auditor (Rs. 1640-2000) which is a lower cadre. Since the petitioner was not in the feeder cadre but in the lower cadre, his case could not be

considered for promotion to the post of Deputy Chief Auditor.

In either of the cases, the contention of the petitioner is not well founded and the petition deserves to be dismissed.

In the facts and circumstances of the case, in my opinion, the petition is liable to be dismissed. So far as action of the Corporation to fill up the post by direct recruitment is concerned, it cannot be set aside or objected as it is one of the modes of making appointment and the petitioner has no right to make grievance against it. Similarly, for promotion, the petitioner is not in the feeder cadre but in the lower cadre and hence, he cannot be said to be eligible. Thus, taking either view, the petitioner's grievance is ill-founded.

For the foregoing reasons, the petition deserves to be dismissed and is accordingly dismissed. Rule discharged. Interim relief vacated. No order as to costs.

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parekh